



Legal Protection for Parties Who Suffer Losses Due to Changes in Land Registration Maps

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Abstract

In the process of land certification Payakumbuh city at 2018 until 2019, there are 54 parties who submit the application of land remeasurement. The application of land remeasurement is the consequence of the difference between the land measurement that were written on the certificate and real its riel size. The difference of land measurement causes legal insecurity to certificate holder. This legal insecurity is against the clause of article 28D paragraph (1) UUD 1945. It is interesting to do research in the form of scientific work in the form of thesis with research problems; How is the process of remeasurement to land that already has certificate in Payakumbuh city; How is the protection of the law to the party who is harmed by the revision of land registration map; How is the process of the revision of land registration map based on the result of land remeasurement in Payakumbuh City. The research method used is a research method with an empirical juridical research, descriptive analysis with object of study includes the revision of land registration map. The main sources of empirical juridical research are field research and literature research. The technique of data processing by editing and data analysis, relate to the revision of land registration map. From the result of the study and discussion it was concluded that the head of the land office can correct the land registration map if there is technical error in the land size data on the land registration map and the holder of the land right is asked to sign a declaration letter to receive the result of the land remeasurement by the land office.

Keywords: *Map Improvements; Land Registration; Re-Measurement; Legal Certainty*

Background of Research

Payakumbuh is one of the areas in West Sumatra which is in a strategic location. Payakumbuh is located at the entrance gate from Pekanbaru to important cities in West Sumatra Province. This strategic location affects the economic value of land in Payakumbuh.

The economic value of land can be reduced due to improvements in land registration maps. Map repair is part of land registration activities carried out through re-measurement. The purpose of the land surveying process is to obtain information about land area and land boundaries. The final result of the land registration activity is a certificate.

In the land certification process in Payakumbuh City from 2018 to 2019, 54 parties submitted applications for land re-measurement. The request for re-measurement is the result of differences in the results of land measurement written on the certificate with the actual size of the land. According to the Head of the Land Infrastructure Section at the Payakumbuh Land Office, differences in land parcel data occur due to differences in geometric data in the measurement time field, natural disasters and missing stakes.¹

Land has an important role for human life because land is one of the sources of life. Such is the importance of land for human life, therefore every human being wants to own and obtain legal certainty in land rights. In order to have land rights, it is necessary to register land in order to solve land problems.

Problem of land can occur not only on parcels of land which has not been registered, but the land that already has certificate also there are still plagued by problems. This means that a certificate of rights over land parcels that has already been registered may still contain problems both regarding the subject and the object of land rights.

The difference in the results of land measurement causes legal uncertainty for the holders of land rights. This is contrary to the provisions of Article 28D paragraph (1) of the 1945 Constitution which explains that:

Everyone has the right to recognition, guarantee, support and legal certainty that is just and equal before the law.

There it is clear that everyone has the right to legal certainty. Every holder of land rights has the right to recognition, guarantee, support and legal certainty regarding the physical data and juridical data contained in the certificate of land rights.

In order to create legal certainty for land rights, a strong legal foundation is needed. The legal foundation related to land problems in Indonesia is generally regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles, hereinafter referred as UUPA.

Based on the cases in land that often occur, it is very necessary to carry out land registration with the aim of providing legal certainty and legal protection to the holders of land rights.² Land registration regulations in Indonesia fall under UUPA Article 19, and are implemented through Government Regulation No. 10 of 1961 and later replaced by Government Regulation no. 24 of 1997 which became effective since 8 October 1997. The registration system used is the registration system of rights, as used in the administration of land registration according to Government Regulation No. 10 of 1961 concerning Land Registration.

Some of the activities carried out in the land registration stage according to Article 19 Paragraph 2 of the UUPA state:

- a. Land measurement, mapping and bookkeeping activities;
- b. Activities to register land rights and transfer these rights;
- c. Submission of certificates of proof of rights, which act as a strong means of proof.

The issuance of documents of proof of rights which are used as a strong means of proof in the form of land books and land certificates consisting of copies of land books and measuring documents. The statements contained in the certificate have legal force and must be recognized as true information as long as there is no means of evidence to prove otherwise.³

¹ Interview with Mr. Igusnaldi, 1 March 2019 at the Payakumbuh Land Office

² Adrian Sutedi, *Transfer of Land Rights and Registration*, 1st Edition, 4th Printing, Jakarta: Sinar Grafika, 2010, Page 112

³ *Ibid* Page 113

Land Registration in Indonesia, which uses a negative publication system with a positive tendency, means that land registration is carried out to provide legal certainty in the land sector with the publication system, which is a negative system, but which contains a positive element, because it will produce letters of proof of rights that act as tools. strong proof.⁴

In a negative publicity system with a positive tendency, the state passively accepts only what is stated by the party requesting registration. So, from time to time a person who feels more entitled to the land can be sued. The party who acquires land from a registered person is not guaranteed, even though he / she acquired the land in good faith.

Sometimes the results of land measurement by the BPN agency that are not always correct can cause problems for the holders of the land rights. Basically, the making of land registration maps is solely for obtaining legal certainty and rights guarantees. Therefore, the data obtained must be in accordance with the actual situation.

Careful accuracy is required in obtaining data both in the administration of land registration and in activities regarding its maintenance.⁵ Thus it can be concluded that differences in land measurement results cause legal uncertainty for certificate holders.

Research Method

In conducting this research, the author uses a juridical empirical approach which relies on primary data or results from field research and secondary data. The juridical approach, namely in making an approach, the principles and regulations that are still in effect are used in reviewing and seeing and analyzing the problems that are the object of research, starting from the analysis of the laws and regulations.

While the definition of empirical approach is an approach arising from patterns of thinking in society and then obtained a truth which must be proven through real experiences in the community. This method is used by considering that the problems studied range in the legislation that is the relation of the regulations with other regulations with its application in practice.

Result of Research

BPN has the task of carrying out governmental duties in the land sector, including policies in the field of survey and land mapping as stated in Article 2 and Article 3 letter b of Presidential Regulation Number 48 of 2020 concerning the National Land Agency. Land registration is carried out by BPN as confirmed in Article 5 of Government Regulation Number 24 of 1997 concerning land registration.

Changing the land registration map is part of the land registration activity which is carried out through a re-measurement procedure. The purpose of the land measurement process is to obtain information on land area and land boundaries in accordance with the basic principles of land registration.

In carrying out measurements and mapping for map making, BPN officers do this by means of terrestrial, photogramagnetic or other methods. Terrestrial measurements and mapping are carried out on the earth's surface. Meanwhile, photogrammetric measurement and mapping uses aerial photographs taken from the air using a camera mounted on an airplane.

⁴ General Explanation of Government Regulation No. 24 of 1997 concerning Land Registration

⁵ See Fandri EtimanNae, *Legal Certainty of Certified Land Ownership Rights*, LexPrivatum Journal, Vol.1/November/2013, p. 59

In the land certification process in Payakumbuh City from 2018 to 2019, 54 parties submitted applications for land re-measurement. one of them was Mr. Suprianto, where on the fifth of April of the year two thousand and eighteen, the land he owned had been re-measured.

Based on the Measurement Task Letter dated March 26, 2018 Number: 147 / St-03.06 / III / 2018 there are differences in physical data in the field with data at the Payakumbuh Land Office. Based on Article 41 of the Regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency Number 3 of 1997, it is necessary to make improvements / amendments to the Measurement Letter Number 00085/2016 of the Tiakar village.

These improvements / changes include:

1. Changes in the shape of the land parcels occurred due to the applicant's mistake in showing the boundaries of the land parcels
2. The change in shape resulted in a change in the area data from 1495 square meters to 1547 square meters.

It is important to improve the land registration map if there are differences in the results of land measurements. Improvement of the land registration map is carried out so that land rights holders can obtain legal certainty regarding the size, location and map of the land they own.

If the registration map making is carried out using the photogrammetric method, there is an error, namely that the mapped plot does not match the actual conditions in the field, then based on measurements in the field the Head of the Land Office can correct the registration map. The improvement of the land registration map is based on the results of re-measuring the land by the Land Office Staff.

After completing the re-measurement, the Applicant will be asked to sign a statement letter. The statement letter contains provisions stating that the applicant accepts the results of the re-measurement of the land.

In the maintenance and security of each registration map, a copy is made either in paper / drafting film or digital data. If there is a change in the registration map, the change must also be made on the copy.

If the registration map making is carried out using the photogrammetric method, there is an error, namely that the mapped plot does not match the actual conditions in the field, then based on measurements in the field the Head of the Land Office can correct the registration map.

For objects found to be measuring errors in a land parcel which is re-measured as referred to in the issuance of the certificate, in addition to changes in the measuring drawing and registration map, changes to the measuring document are also made. Regarding the improvement of the land registration map, BPN will publish an official report.

Based on the 1945 Constitution of the Republic of Indonesia, the Republic of Indonesia provides guarantee and protection for the rights of citizens, including the rights of citizens to obtain, own and enjoy property rights. This is important to do considering that land is one of the main problems in Indonesia.⁶

The Unitary Republic of Indonesia, which based on the 1945 Constitution provides guarantees and protection of the rights of citizens, among others, the rights of citizens to obtain legal certainty over land owned by land rights holders. The provisions of Article 28D paragraph (1) of the 1945 Constitution which explain that:

Everyone has the right to recognition, guarantee, support and legal certainty that is just and equal before the law.

⁶ Adrian Sutedi, *Transfer of Rights to Land danpendaftaran*, Sinar Grafika, Jakarta, in 2013, h 1 m . 1.

There it is clear that everyone has the right to legal certainty. Every holder of land rights has the right to recognition, guarantee, support and legal certainty regarding the physical data and juridical data contained in the certificate of land rights.

The Basic Agrarian Law (UUPA) is another designation of Law Number 5 of 1960 concerning Basic Agrarian Principles. This law was passed and promulgated on September 24, 1960 in Jakarta. The purpose of issuing UUPA was to end the dualism of agrarian law in Indonesia at that time.⁷

In Article 32 paragraph (1) Government Regulation No. 24/1997 states that "a certificate is a proof of right which is valid as a strong means of evidence regarding physical data and juridical data contained therein as long as the physical data and juridical data are in accordance with those in the measurement letter. and the land book concerned".

This provision implies that as long as the opposite has not been proven, the physical data and juridical data included in the certificate must be accepted as true data, both in daily legal acts and in court disputes, as long as the data is in accordance with what is stated in the letter. measure and book the land concerned.

Granted legal protection in case of measurement error in land registration map is the way done by the BPN data changes through repeated measurements of land. In Article 41 of the Regulation of the Head of BPN Number 8 of 2012 it is stated that if in the measurement for making registration base maps, registration maps and measuring pictures there is a technical error in the measurement data, then the Head of the Land Office can correct the error. If a land parcel which has been re-measured has been issued a certificate, then in addition to changes to the measuring drawing and land registration map, changes to the measuring certificate will also be made.

In the standard clause of the sale and purchase deed, there is usually a clause which states: in the event that there is a difference in the area of land that is the object of the deed, the parties will accept the measurement results from the National Land Agency agency without reconsidering the sale and purchase price and will not mutually sue. This provision is made with the aim of providing legal certainty in the implementation of the said land sale and purchase.

According to information from Elsy Anthoneta Joltuwu, SH, a young legal counselor at the National Law Development Agency, it is necessary to know that the determination of land boundaries (land stakes) is carried out for the first time after the UUPA is in effect, so that it is considered boundary determination. -this land boundary as the implementation of land registration for the first time. Therefore, the sale and purchase carried out shall be stated in a sale and purchase deed which is validated by the PPAT and then submitted by the head of the land office for the purposes of registering land (obtaining a certificate of proof of land ownership / certificate).⁸

In the activity of registering land for the first time, it is carried out by measuring the mapping and bookkeeping of the land, registration of land rights and transfer of these rights along with the issuance of certificates of proof of rights which are valid as a strong means of proof. Therefore, it is necessary to present the witnesses at AJB regarding the history of the land in dispute. Thus witnesses, village officials and parties to a dispute can be mediated. If the mediation is unsuccessful, civil and criminal charges may be filed in court.

In solving various land problems, it is necessary to carry out land registration activities that allow land rights holders to easily prove their rights to the land they control. This is in order to obtain the

⁷ Ibid

⁸ <https://lsc.bphn.go.id/konsulturView? Id = 1166>, accessed January 10, 2021

necessary information regarding land which is the object of the law to be carried out, as well as for the government to implement land policies.⁹

With regard to land, Law Number 5 of 1960 concerning the basic regulations of Agrarian Principles, in Article 19 orders the holding of land registration in order to guarantee legal certainty and protection. The implementation of land registration is regulated in Government Regulation Number 24 of 1997 concerning land registration.

If after re-measuring the land measurement results are found, the land registration map will be corrected by BPN and the applicant is asked to sign a statement letter. The statement letter is evidence that the applicant has received the results of re-measurement of land by BPN.

References

Books

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Interview

Interview with Mr. Igusnaldi, 1 March 2019 at the Payakumbuh Land Office.

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⁹ See Bernhard Limbong, 2015, *Land Acquisition for Public Interest*, Margaretha Pustaka, p. 323.